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Lawyers, lies and liability

James Randi

Galileo's Revenge: Junk Science in the Courtroom. By Peter W. Huber. *Basic Books*: 1991. Pp.274. \$23.

As an 'expert witness' on legal matters related to claims of alleged occult phenomena, I have often testified in court about specific and general findings in the field. So I thought I knew a bit about uninformed jurists and the rejection by courts of good evidence. Then I read *Galileo's Revenge*. What scales remained fell from my eyes, and I began to see the disturbing extent to which the scales of justice indeed tilt.

In this startling and riveting book, Huber reveals just how capricious the law is on the subject of liability, and how the outcome of a case can depend on the declarations of a claimed expert scientific witness who has been handsomely paid to have an opinion that serves his employer, a lawyer. At one time in the United States, such expert witnesses had to prove themselves by giving their credentials or by undergoing an examination. No longer. Law books actually instruct lawyers how to shop around. These so-called experts advertise, and agencies who supply them for employment state that if the expert they provide does not have the 'correct' opinion, then they will find the client one who does.

In 1986, a US federal judge advised his colleagues to "take hold of expert testimony in federal trials". As a result, some jurists began to pay some attention to what Huber calls "that radical London novelty of 1660 — the professional society — and that radical Paris novelty of the 1820s — the professional journal and peer review". But 'junk science', as Huber labels it, continued to rule, and still rules, in US courts. Untruths and raw speculation repeated enough times to jurists become the reality on which they base their decisions, leading to incredible judicial errors.

It is bad enough that the law is riddled with pseudoscientific notions; it is worse still when judges simply decide to ignore the best, established findings of good science. As an example, a California court ruled that Charles Chaplin was the father of a particular child despite the hard fact that Chaplin had group O blood, and the mother and child had group A and B blood, respectively. Unless a divine exception was made in this

case, Chaplin was not the father. But the court freely disregarded the scientific evidence.

Huber examines some of the most publicized legal controversies of recent decades. The frightening revelations that he provides range from the farcical "sudden acceleration" charges levied against the Audi automobile to the nonsense of "chemically-induced AIDS" claims. I must admit that I had accepted the claims made against the Audi model 5000 manufactured between 1978 and 1986. The company was forced to recall 250,000 cars that were perfectly sound,

and paid millions of dollars to drivers who simply mistook the accelerator pedal for the brake. Audi spent additional millions of dollars to defend themselves in court, and their sales in the United States dropped precipitously. My acceptance of the possibility that the car's computer habitually malfunctioned in a sporadic fashion was based on an account offered by a usually reliable television show that featured experts whose credentials were not easily checkable. I did not fall for the "environmental causes" claptrap that was invoked as a basis for litigation over AIDS. (Some cases were claimed to have been triggered from pollutants arising from carpets and furniture.)

What are the reasons for this deplorable state of affairs? In tackling this question, Huber looks at how and why even reputable scientists can slip into junk science, tracing as an early example the acceptance and subsequent rejection by the scientific community of the existence of N rays at the turn of this century. He shows how lawyers are now capable of launching massive attacks involving thousands of claims and extortionate settlements, as well as how the lure of insurance attracts and sustains litigation. Of course the mass media have a lot to answer for in creating enormous controversies with no

basis in fact. Indeed, as Huber notes, fear itself has become a basis for litigation.

Galileo's Revenge came out too soon to record two recent victories over junk science. Earlier this year, a woman in Florida claimed that she had lost her psychic powers when some timber fell on her at a local store. Although the judge declared before the case got under way that psychic powers had been scientifically established (a chilling pronouncement for the defence lawyers), the jury was more sensible and awarded her \$5,000. She had asked for \$1 million and had been offered \$40,000 to settle out of court. Sanctions against her took away the award and put her in debt to the court. Then in September, a federal jury absolved the Lilly Company from claims that their drug Prozac had caused users to commit murder and suicide, and had caused one woman to be an "insatiable nymphomaniac". The anti-Prozac cause had been supported by the Church of Scientology. In both these cases, junk science was rejected and reason prevailed, in spite of evidence given by paid 'scientific experts'.

Huber says that if an expert authority declares that something is in fact not the cause of a grievance, all the lawyers need to do is "ask a jury. And then another, and another, as many times in succession as the trial bar may deem to be justified by either visceral conviction or speculative greed. We find, once again, that our modern liability system is all accelerator and no brake." He is justifiably angry at jurists who deny the established scientific facts and accept pseudoscience: "It is simply unacceptable for any judge to insist that there is no such thing [as scientific truth] Claims dressed up in the form of serious science but lacking serious empirical and conceptual credentials will continue to be junk science. We do not hesitate to denounce charlatans and frauds when they peddle snake oil in country fairs or on network television. We need not hesitate to denounce them when they are primed and primed by lawyers and solemnly ushered into court." He contends that the rules of evidence must be changed to reflect science's definition of cause as the only one that is objectively verifiable.

We would do well to remember Huber's opinion when advocates of cold fusion and homeopathy object to the publication of valid commentary about the evidence for their claims. □

James Randi is a professional magician and investigator of pseudoscientific claims. He is the author of The Truth about Uri Geller, The Faith Healers and The Mask of Nostradamus, and holds a MacArthur Foundation Fellowship.

Intellectual dissent

Michael Shepherd

Final Analysis: The Making and Unmaking of a Psychoanalyst. By Jeffrey Masson. HarperCollins/Addison-Wesley: 1991. Pp. 212. £15, \$18.95.

PSYCHOANALYSIS has proved to be an important influence on Western thought during the twentieth century. Now that it is in decline, the reasons for its long run can be discerned more clearly. Scientific validity can barely be included among them. As Peter Medawar pointed out, the system is constructed on a quasi-scientific psychology; the ideas are essentially unbiological; the thinking is mythological, more akin to imaginative literature than to science; and the doctrines are "cunningly isolated from the salutary rigours of disbelief". Further, it has failed to justify the therapeutic claims advanced by its proponents.

Jeffrey Masson would agree, but from a very different standpoint. Most of the critics of psychoanalysis have examined it as informed outsiders. Masson has been an insider, a participant-observer who briefly entered the sanctum sanctorum of the psychoanalytical hierarchy when he was appointed projects director of the Sigmund Freud Archives by Kurt Eissler and formed a close professional relationship with Anna Freud. A former professor of Sanskrit, Masson rose rapidly within psychoanalytical circles during the 1970s and edited and translated the Freud-Fliess letters. Gradually,

however, he began to entertain doubts about several aspects of the world in which he appeared to be so successful, and in 1981 an article in the *New York Times* he gave public expression to his critical assessment of Freud's seduction theory, one of the cornerstones of psychoanalytical dogma. In the process he accused Freud of moral cowardice. Shortly afterwards he was relieved of his directorship of the archives and his links with the International Psychoanalytical Association were severed.

Masson has repented with his pen. In 1984 he published his views in a book with the self-explanatory title of *The Assault on Truth: Freud's Suppression of the Seduction Theory*. In 1988 he turned against the whole psychotherapeutic enterprise with another volume, again with a revealing title, *Against Therapy: Emotional Tyranny and the Myth of Psychological Healing*. This third volume is largely autobiographical, tracing the steps of the professional and personal journey that has led to his present position.

The story has been told before. In the United States, where psychoanalysis flourished as nowhere else, Masson's career was of sufficient interest for Janet Malcolm, a journalist on the *New Yorker*, to make it the springboard of her memorable exposé, entitled *In the Freud Archives* (Cape, 1984). Malcolm, whose earlier investigation of psychoanalysis as "an impossible profession" had familiarized herself with the background, provides a searching account of the issues and the people involved, including a vivid portrait of Masson himself, a man who "gave off the sheen of the intellectual big time that even those who disliked him from the start were impressed by".

The sheen is largely missing from *Final Analysis*, in which Masson presents himself more modestly as a man who looked for truth and was disillusioned by what he found, a man who was more sinned against than sinning and who gradually came to realize that he had landed in a nest of vipers. Making use of a succession of anecdotes and comments, he castigates the closed societies of the analytical institutes and depicts most of his former colleagues as venal, back-biting, envious and all too often incompetent. From this judgement he exempts Kurt Eissler and Anna Freud, who emerge as sincere but misguided fanatics. His verdict is unequivocal: "In my experience, psychoanalysis demanded loyalty that could not be questioned, the blind acceptance of unexamined 'wisdom'. It

Freud — accused of moral cowardice.

The Huber-Deusch Collection